IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Ramesh Chandra & Anr. Vs. State of Rajasthan
(D.B.CRIMINAL JAIL APPEAL NO.570/2002)

D.B. Criminal Jail Appeal against the judgment dt.18.6.2002 passed by the Additional Sessions Judge No.3, Udaipur in Sessions Case No.61/2001(273/01).

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Date of Judgment: July 17, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Anuj Sehlot, Amicus Curiae

Mr.JPS Choudhary, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. The instant appeal is directed against the judgment dated 18th June, 2002 passed by the Additional Sessions Judge No.3, Udaipur convicting the appellants Ramesh Chandra and Dali Chand of offence under Section 302 I.P.C. and sentencing each of them

to imprisonment for life and to pay a fine of Rs.2000/-; in default to further undergo one year rigorous imprisonment.

2. Briefly stated the prosecution case is that on 5.8.2001 P.W.1 Bada lodged an oral First Information Report at Police Station, Govardhanvilas stating inter alia that on the preceding day at about 6 P.M. His deceased son Shyam Lal left the house but he did not return till night. In the morning at about 9 A.M. P.W.4 Ishwar Lal, P.W.5 Panna Lal and P.W.6 Heera informed him that in the last night at about 8 P.M. quarrelling voice attracted them to a nearby field. They found that the appellants Dali Chand and Ramesh were assaulting deceased Shyam Lal by lathies. On this information police registered a case for offence under Section 302 I.P.C. and proceeded with investigation. After usual investigation police laid charge-sheet against both the appellants under Section 302 & 302/34 I.P.C.

3. The appellants pleaded not guilty and claimed trial. The prosecution adduced oral and documentary evidence to prove its case. The appellants denied the correctness of the evidence appearing against them in

their statements under Section 313 of the Code of Criminal Procedure. The trial court found the prosecution case proved convicted and sentenced the appellants in manner stated above.

4. We have heard the learned Amicus Curiae Mr.Anuj Sehlot and the learned Public Prosecutor and also perused the evidence on record. It is not in dispute that the deceased died of homicidal death. P.W.12 Dr.Suresh Kumar Bhatnagar, who conducted the autopsy on the dead body of Shyam Lal vide Ex.P16, noticed the following injuries:

> (1) Incised wound 4x1 cm on left temporal parietal region of skull.
>
> (2) Lacerated wound 1x.5 cm on left side of forehead on left eye brow.
>
> (3) Incised wound 4x1 cm on right side of forehead near jaw.
>
> (4) Lacerated wound 1x.5 cm near right of eye brow.
>
> (5) Incised wound 4x1 cm on right parietal region of skull.

In his opinion the cause of death was coma as a result of antemortem head injury which was sufficient to cause death in the ordinary course of nature.

5. The entire case rests on the testimony of the eye-witnesses namely P.W.4 Ishwar Lal and P.W.5 Panna Lal. P.W.4 Ishwar Lal deposed that on the fateful day he was in his field. The cries from the nearby field attracted him. He reached on the spot and found that the appellants Dali Chand and Ramesh were assaulting deceased Shyam Lal by lathies. He inquired the cause of quarrel on which it was disclosed that they had a land dispute. Thereafter he went to call P.W.6 Heera. In the cross examination he admitted that he had not witnessed the incident. In his words "यह सही है कि मैंने रमेश व दलीचंद को श्यामलाल के साथ मारपीट करते हुए नहीं देखा था" In the cross examination he has also changed the place of incident. He stated that the dead body was lying in a drainage. He also admitted that the deceased Shyam Lal had arrived in drunken condition. He also admitted that on the date of incident the appellant Ramesh was at his house. Thus, it clearly appears that P.W.4 Ishwar Lal has not supported the prosecution case. We are of the view that the trial court has committed error in relying on the testimony of P.W.4 Ishwar Lal.

6. P.W.5 Panna Lal did not support the prosecution

case. As such he was declared hostile. He stated that the cries of Ishwar Lal attracted him to the nearby field. He alongwith Ishwar Lal went to the field. They saw Ramesh Chandra and Dali Chand standing and Shyam Lal lying on the ground. Both the appellants were assaulting him. Thereafter they went to call Heera. He also stated that police never recorded his statement. In the cross examination he admitted that deceased Shyam Lal was a drunkard. His cries attracted them to the nearby field. They found Shyam Lal lying injured in the field. They returned to their own field. At that time there was none around him. He also admitted that he had not seen any body assaulting Shyam Lal. In his words "यह सही है कि श्यामलाल के साथ किसी को मारपीट करते हुये मैंने नहीं देखा था". He further admitted, "जहां पर मृतक श्यामलाल पडा हुआ था वहा पर मैंने मुल० रमेश व दलीचंद को नहीं देखा था।"

7. P.W.6 Heera stated that he was informed by Panna Lal and Ishwar Lal that on the fateful day Ramesh and Dali Chand were assaulting Shyam Lal. On the next day he went to the place of incident and found the dead body of Shyam Lal lying.

8. P.W.1 Bada is the father of deceased Shyam Lal. He stated that he did not disclose the name of Dali Chand and Ramesh in the First Information Report Ex.P1. This witness was declared hostile. P.W.2 Lala, P.W.3 Gomaram, P.W.8 Kalulal, P.W.9 Sardara and P.W.10 Hurma are the formal witnesses of different memos. P.W.11 Rajiv Joshi is the Investigating Officer. He has given the details of investigation. P.W.13 Laxmanlal is a police officer. He has given the details of the investigation. As far as evidence of recovery is concerned, the same has not been supported by motibirs and further no report from the Forensic Science Laboratory was produced. As such the trial court discredited the testimony of recovery. We are in agreement with the view expressed by the trial court that the evidence of recovery of lathies is not of any use in the instant case.

9. On careful consideration of the entire evidence we are of the view that there is no evidence worth the name to connect the appellants with the alleged crime. Both the alleged eye witnesses i.e. P.W.4 Ishwar Lal and P.W.5 Panna Lal have not supported the prosecution case. It may also be stated that the

evidence of these two witnesses is also in variance with the medical evidence inasmuch as while it is stated that the accused persons inflicted injuries by lathies but the post-mortem report Ex.P16 shows that there are three injuries of incised wound. We are of the view that the trial court has committed error in convicting the appellants of offence under Section 302 I.P.C.

10. Consequently the appeal is allowed. The judgment of the trial court Additional Sessions Judge No.3, Udaipur dated 18.6.2002 is set aside. The appellants are acquitted of the charges levelled against them. The appellants are in Jail. They shall be released forthwith, if not required in any other case.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

BKS/-